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IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 1202

SPEYER, INC. AND YELLOW CAB COMPANY OF ERIE,
Petitioners

v.

HUMBLE OIL & REFINING COMPANY AND
A. O. SMITH CORP., *Respondents*

REPLY BRIEF OF PETITIONERS

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April 1969

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Neither respondent in its brief in opposition to petition for certiorari questioned petitioners' conclusions or legal authorities set forth on pages 8, 9, 10 and 11 of the original petition for writ of certiorari, being Reason I for granting the writ. Respondent, Humble's, statement on page 11 that four of the Pennsylvania cases were mentioned by the Court of Appeals begs the question since they were mentioned for other principles.

On April 14, 1969, the United States Court of Appeals for the Third Circuit changed the language of the opinion to such an extent as to shed new light on the liability of respondent, A. O. Smith, under General Contract Law and Warranty. The defect claimed against A. O. Smith Corp. was that the valves in the dispensing unit were unable to relieve pressure from the hose side of the pump (503a, 506a, 532a, 533a), and that when the Flexsteel hose was

pulled the existing valves were not capable of relieving pressures before the casting was cracked (R. 1036a, 1037a, 1041a, 1042a, 775a, 776a, 765a, 772a, 824a, 832a, 975a, 980a, 1019a, 1021a, 1072a, 1083a). Neither the District Court nor the Court of Appeals applied the Pennsylvania law established in *Kassab v. Central Soya*, 432 Pa. 217, 246 A. 2d 848 (1968). The Court of Appeals indicated that petitioners were not entitled to recover under Pennsylvania law from A. O. Smith Corp. on a breach of warranty case because of lack of privity between A. O. Smith and Yellow Cab Company and Speyer, Inc. This was clearly contrary to the law established in Kassab, where the Supreme Court of Pennsylvania held,

> "Pennsylvania should join the fast growing list of jurisdictions that have eliminated the privity requirement in assumpsit suits by purchasers against remote manufacturers for breach of implied warranty."

For the above additional reasons, viz., failure of respondent, Humble, to respond to Petitioners' Reason I for granting the writ, and the material change of position by the Court of Appeals while this petition was pending, we again submit that the writ of certiorari should be granted.

Respectfully submitted,

KNOX, GRAHAM, PEARSON & MCLAUGHLIN

By: WILLIAM W. KNOX

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